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Remarks:

Regarding the objection to claim 32:

The applicant's amendment to claim 32 are believed to address and overcome the Examiner's objections.

*Regarding the Examiner's rejection of claims 31 – 43 under 35 USC 103(a) in view of US 5691287 to Villars et al, (hereinafter "Villars") in further view of US 2002/0039981 to Lopes (hereinafter "Lopes"):*

The applicants respectfully traverse the rejection of the claims in view of the combined Villars and Lopes references.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under §103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. More recently in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007), the Supreme Court held that The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396. Exemplary rationales that may support a conclusion of obviousness include:

(A) Combining prior art elements according to known methods to yield predictable results;

(B) Simple substitution of one known element for another to obtain predictable results;

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(C) Use of known technique to improve similar devices (methods, or products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. See MPEP 2141 (III).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016, 1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not

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in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The "predictability or lack thereof" in the art refers to the ability of one skilled in the art to extrapolate the disclosed or known results to the claimed invention. If one skilled in the art can readily anticipate the effect of a change within the subject matter to which the claimed invention pertains, then there is predictability in the art. On the other hand, if one skilled in the art cannot readily anticipate the effect of a change within the subject matter to which that claimed invention pertains, then there is lack of predictability in the art. Accordingly, what is known in the art provides evidence as to the question of predictability. In particular, the court in *In re Marzocchi*, 439 F.2d 220, 223-24, 169 USPQ 367, 368-70 (CCPA 1971), stated:

"[i]n the field of chemistry generally, there may be times when the well-known unpredictability of chemical reactions will alone be enough to create a reasonable doubt as to the accuracy of a particular broad statement put forward as enabling support for a claim. This will especially be the case where the statement is, on its face, contrary to generally accepted scientific principles. Most often, additional factors, such as the teachings in pertinent references, will be available to substantiate any doubts that the asserted scope of objective enablement is in fact commensurate with the scope of protection sought and to support any demands based thereon for proof."

The applicant asserts that applicant's presently claimed invention is properly considered unobvious over the prior art references of record. The applicant traverses the Examiner's assertions that the combined consideration of the Villars and Lopes reference would probably suggest the presently claimed invention to a skilled artisan considering those two prior art documents.

First, as noted that in the present paper are the amendments to claim 31 take the composition now claimed outside of the scope of Villars, which is only relevant to compositions of solid, syndet bar soaps and not too highly aqueous compositions. A skilled artisan would not consider Villars solely directed to solid compositions, one

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aspect of a highly aqueous liquid composition. Thus, consideration of Villars is believed to be properly withdrawn, as such would not be combined or considered combinable by a skilled artisan with the Lopes reference.

With respect to Villars, the applicants traverse the examiner's characterization of the relevance of that document. The applicants disagree with the Examiner's assertion at page 5 of the office action that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize all four buffers (sodium lactate, lactic acid, citric acid and sodium citrate) as taught by Villars. " As is seen from an inspection of Villars, (and is also recognized by the Examiner at page 4 of the Office Action) "Villars fails to directly exemplify the use of all four buffers in a single example." A review of Villars and in particular, the example compositions provided therein reveals only that a combination of lactic acid with sodium lactate are disclosed, e.g. as identified in the following table from col. 7 of Villars:

TABLE 1C

<u>Experimental Formulas By Weight % of All Ingredients in Formula</u>								15
COMPONENT	FORMULA NO.							20
	104	110	105	113	111	106	107	
Sodium Cocoyl Isethionate	20.0	20.0	23.0	23.0	25.0	25.3	25.3	25
Cetyl Alcohol	8.0	8.0	8.0	8.3	8.0	8.0	7.0	
Glycerin	4.5	1.5	4.0	2.8	4.5	2.0	3.0	
Hydrogenated Vegetable Oil	5.4	5.4	4.0	4.5	5.4	4.0	4.0	
Hardened Vegetable Shortening	5.4	5.4	4.0	4.5	5.4	4.0	4.0	
Colloidal Oatmeal	38.0	38.0	38.0	38.0	38.0	38.0		30
Laureamide DEA	1.8	1.8	1.8	1.8	1.8	1.8	1.8	
PEG-75	2.8	2.8	2.8	2.8	2.8	2.8	2.8	
Lactic Acid, 80%	1.5	1.5	1.5	1.5	1.5	1.5	1.5	
Sodium Lactate, 60%	2.3	2.3	2.3	2.3	2.3	2.3	2.3	
Odor Masking Agents	1.9	1.9	1.9	1.9	1.9	1.9	1.9	35
Preservatives	0.8	0.8	0.8	0.8	0.8	0.8	0.8	
Titanium Dioxide	1.0	1.0	1.0	1.0	1.0	1.0	1.0	
Purified water	6.6	9.6	8.0	7.1	1.6	6.6	6.6	

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It is asserted that a skilled artisan, when seeking to provide a buffer to a chemical composition, would not find any necessity to add in *additional* constituents which might be considered and would be expected to be redundant. There is no justification from a technical viewpoint, nor from a cost perspective to include multiplicity of compounds which at best would only be expected to provide an identical function. Further, no additional benefits to the inclusion of a multiplicity of buffers can be foreseen by Villars, or by a skilled artisan considering Villars, and as such there is no motivation exant. Furthermore, Villars is strictly limited to solid bar soap compositions; the currently claimed invention is a quiz in nature. The skilled artisan would also understand that the chemistries of formulations limited to solid forms, versus those which are necessarily highly aqueous and liquid, are often substantially different. Thus Villars would either be dismissed out of hand by a skilled artisan, or in the alternative provides no motivation to produce the currently claimed invention either considered singly or in conjunction with Lopes. There would be no "expectation of success" in producing a liquid composition, wherein the starting composition is a solid.

Turning now to Lopes, the applicant traverses the examiner's characterizations concerning the Lopes reference. Lopes' supposed teaching regarding the use of organic acids on the one hand, and "buffers" on the other hand, does not render the currently claimed invention as being obvious although, Lopes is directed to a liquid composition. Concerning the role of his organic acids, Lopes states:

[0017] The cleaning and sanitizing composition of the present invention may be employed in either a concentrated composition or in a ready-to-use formulation. The cleaning and sanitizing composition contains:

[0018] A. an acidifying agent, present either as an individual compound or as a mixture of at least two compounds;

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[0023] The acidifying agent is at least one compound selected from acetic acid, adipic acid, ascorbic acid, benzoic acid, citric acid, dehydroacetic acid, erythorbic acid, fumaric acid, glutaric acid, gluconic acid, hyaluronic acid, hydroxyacetic acid, lactic acid, malic acid, sorbic acid, succinic acid, tannic acid, tartaric acid, sulfuric acid, phosphoric acid, nitric acid, hydrochloric acid, sulfamic acid, carboxylic acid polymers, homo- or hetero- polymerized alpha hydroxycarboxylic acid such as polylactic acid or poly lactic-glycolic acid and mixtures of two or more of said acids.

[0025] While the acidifying agent can be a single compound, it is preferable that the acidifying agent be a combination of aforementioned acids present in ratios and concentrations which is sufficient to provide a pH in the resulting use solution below 5. Typically two or more acids will be employed in combination with one another.

With regard to the role of the sequestering/chelating agents, Lopes recites:

[0048] The sanitizing and antimicrobial composition of the present invention also contains at least one sequestering or chelating agent. As used herein the terms "sequestering" and "chelating" are used interchangeably to mean compound which, among other functions, will act to reduce cloudiness or turbidity which might otherwise result when the compositions are dissolved or admixed in hard water. Components which may be employed for these purposes include organic compounds such as citric acid, ethylene diamine tetraacetic acid (EDTA), as well as organic salts thereof such as calcium citrate, calcium diacetate, isopropyl citrate, monoisopropyl citrate, potassium citrate, sodium citrate, stearyl citrate, and sodium gluconate.

Notwithstanding the above, Lopes does not render the currently claimed invention as being any more obvious when considered singly, or even if considered in combination with Villers (which the applicants assert should not be considered is being directed

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towards a solid bar composition). Lopes' clearly teaches that (i) the role of his organic acids -- which quite notably include a broad definition of various organic acids, but equally notably omit any mention of "salts" of those organic acids --, is to provide a low pH to his compositions, namely at "below 5", and (ii) the role of his sequestering or chelating agents appear to be for reducing "cloudiness or turbidity" in his formulations. With regard to the latter constituent, there's nothing from Lopes which would provide to skilled artisan a suggestion that a multiplicity of chelating agents would provide any additional or further benefit, even if added to the Lopes formulations. Furthermore, Lopes is wholly silent as to the necessary inclusion of at least two different organic acids and salt forms of the *same* organic acids, and any benefits that would be derived therefrom. As such, it appears that the Examiner's basis for rejecting the claims is no part based a "hindsight reconstruction" of the claimed invention. Such is impermissible. The Examiner is reminded that in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

See also *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303 (CAFC, 1983); *In re Mercier* 185 USPQ 774, 778 (CCPA, 1975); *In re Geiger* 2 USPQ2d 1276 (CAFC, 1987).

The applicant further points out that Lopes' liver compositions did not of necessity require a further "biocidal agent" as has been entered in new claims presented with this paper.

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In view of the foregoing, reconsideration of an withdrawal of the outstanding grounds of rejection in view of the Villars and Lopes references is respectfully requested.

*Regarding the rejection of claim 44 under 35 USC 103(a) in view of US 5691287 to Villars et al, (hereinafter "Villars") in view of US 2002/0039981 to Lopes (hereinafter "Lopes"), and in further view of US 1709411 to Simmons (hereinafter "Simmons"):*  
The applicants respectfully traverse the rejection of the claims in view of the combined Villars, Lopes and Simmons references.

For the sake of brevity, the applicant herein repeats and incorporates by reference all prior remarks made concerning the Villars and Lopes references as being equally applicable to the instant grounds of rejection of claim 44. The applicants traverse the examiner's further consideration of Simmons as it is their position that such further consideration does not address and overcome the fatal shortcomings of the Villars and Lopes references discussed *supra*. While the applicants concede that Simmons provides a dispenser for "creams and the like" as depicted in this venerable US patent document, Simmons' specification is wholly silent as to the nature of any of the compositions which can be supplied to, and later dispensed from his dispenser. Thus, Simmons' does not further provide any teaching which overcomes the fatal shortcomings of the Villars and Lopes references, nor render the rejected claim as being any more obvious. Accordingly, reconsideration and withdrawal of the house and grounds of rejection in view of the combined Villars, Lopes and Simmons references is requested.

Favorable consideration of the foregoing remarks, as well as the amended and new claims presented in this paper is requested. Thereafter early issuance of a *Notice of Allowability* is solicited.



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Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

**CONDITIONAL AUTHORIZATION FOR FEES**

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

  
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04 Nov. 2010  
Date:

Enclosure – Request for Continued Examination

**CERTIFICATION OF TELEFAX TRANSMISSION:**

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-272-8300 on the date shown below:

  
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